BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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| LeRoy Koppendrayer | Chair |
| Marshall Johnson | Commissioner |
| Ken Nickolai | Commissioner |
| Thomas Pugh | Commissioner |
| Phyllis A. Reha | Commissioner |

In the Matter of the Joint Application for Approval and Consent of Interstate Power and Light Company and FPL Energy Duane Arnold, LLC, Requesting that the Minnesota Public Utilities Commission Allow Interstate Power and Light to Sell and Transfer Ownership Interest in the Duane Arnold Energy Center to FPL Energy Duane Arnold, LLC

ISSUE DATE: January 25, 2006

DOCKET NO. E-001/PA-05-1272

ORDER APPROVING SALE AND TRANSFER OF OWNERSHIP INTEREST IN THE DUANE ARNOLD ENERGY CENTER WITH CONDITIONS

## PROCEDURAL HISTORY

This case involves the proposed sale of a nuclear power generating facility, the Duane Arnold Energy Center (DAEC), located near Cedar Rapids, Iowa. Interstate Power and Light (IPL or the Company) wants to sell its ownership in DAEC because it no longer wants to own a nuclear plant, claiming that the financial risks are not commensurate with the potential return. The proposed transaction affects Minnesota ratepayers, which comprise approximately 6% of IPL's retail electric business.

Specifically, this case involves the August 5, 2005, Petition of IPL and FPL Energy Duane Arnold, LLC (FPLE), filed pursuant to Minnesota Statute § 216B.50, subd. 1, and Minnesota Rules 7825.1800(B), 7825.1400 and 7825.1700. IPL and FPLE (the Applicants) submitted a joint application for approval and consent requesting that the Commission allow IPL to sell and transfer its ownership interest in DAEC, including nuclear fuel and certain assets, to FPLE. The sale is proposed to close on January 31, 2006. The Applicants requested expedited consideration.[1]

The Department of Commerce Energy Division (the Department) filed comments on November 18, 2005. The Department recommended denial, for regulatory purposes, of the petition. The Department asserted that the DAEC transaction is not consistent with the public interest.

[1] Timely action is urged by the Applicants because of a provision in the DAEC purchase agreement that reduces the purchase price by $128,000 per day for each day that the closing of the transaction is delayed beyond January 31, 2006.

On November 30, 2005, the Iowa Utilities Board, after a multiple day hearing on the matter, issued an Order allowing the transfer outlined herein.[2] The Iowa Board denied a request for rehearing and stay on January 18, 2006. The Federal Energy Regulatory Commission (FERC), Nuclear Regulatory Commission (NRC), and the States of Wisconsin and Illinois already have all approved the transaction.

On December 1, 2005, IPL and FPLE filed their reply to the Department's comments.

On December 7, 2005, the Department filed supplemental comments.

On January 12 and 19, 2006, the matter came before the Commission. At the oral argument on January 19, the parties requested a break from the proceeding and met to discuss areas of possible resolution. The parties subsequently presented their proposed resolution of this matter to the Commission.

## FINDINGS AND CONCLUSIONS

### I. The Proposed Transaction

DAEC is a nuclear generating station located near Cedar Rapids, Iowa. The plant has been in commercial operation since 1974, and its current NRC operating license expires in 2014.

IPL owns 70% of DAEC.[3] Iowa Electric was the utility that originally was the majority owner of DAEC. When Interstate Power and its predecessor utilities merged in 2001, DAEC became part of the power supply for Minnesota. DAEC was placed in IPL's Minnesota rate base in 2003 as part of its general rate increase in Docket No. E-001/GR-03-767. The majority of IPL's generation is used to serve IPL's Iowa ratepayers.

FPLE is an indirect, wholly owned subsidiary of FPL Energy, LLC. FPL Energy is the unregulated power generation arm of FPL Group, a public utility holding company incorporated in Florida. FPL Group has a regulated utility affiliate, Florida Power and Light.

The purpose of the Petition herein is to allow IPL to sell its 70% interest in DAEC, including nuclear fuel, to FPLE. The transaction is documented by an asset sales agreement (ASA) and a purchased power agreement (PPA), that begin when the sales transaction closes and are completed in 2014, when the current operating license expires.

[2] Iowa Utilities Board Docket No. SPU-05-15 (November 30, 2005).

[3] The other owners are Central Iowa Power Cooperative (20%) and Corn Belt Power Cooperative (10)%. The other owners are not involved in this Transaction.

No written agreements with respect to future power purchases have been established between the Applicants beyond the 2014 date. [4]

If the Commission grants the Petition herein, IPL has also requested that the Commission enter an order making certain specific determinations in accordance with the provisions of Section 32(c) of the Public Utility Holding Company Act of 1935, as amended, 15 U.S.C.A. § 79z-a ("PUHCA"). Specifically, IPL requests that the Commission determine that allowing the DAEC, which IPL owns in part, to be an "eligible facility" as defined by PUHCA Section 32(a)(2), will benefit consumers, is in the public interest, and does not violate Minnesota law.

## II. Filing Requirements

The threshold question in examining the proposed Transaction is whether the Applicants have complied with the applicable filing requirements. The Commission has reviewed the Applicants' filing and finds that it fully meets the rule's filing requirements of Minnesota Rules 7825.1400.

## III. Legal Standard for Review

The Commission's review of the proposed Transaction is governed by Minn. Stat. 216B.50, subd. 1, which states:

> No public utility shall sell, acquire, lease or rent any plant as an operating unit or system in this state for a total consideration in excess of $100,000, or merge or consolidate with another public utility operating in this state without first being authorized to do so by the Commission. Upon the filing of an application for the approval and consent of the Commission thereto the Commission shall investigate, . . . , and if it shall find that the proposed action is consistent with the public interest, it shall give its consent and approval by order in writing.

The key phrase in this statute is "consistent with the public interest." The Commission has established that the public interest standard "does not require an affirmative finding of public benefit." *In the Matter of the Proposed Merger of Minnegasco, Inc. with ARKLA, Inc*., Docket No. G-008/PA-90-604 (1990). Nor does the "public interest" standard require that the proposed transaction "promote" the public interest. *See, e.g., In the Matter of a Request for Approval of the Acquisition of the Stock of Natrogas, Incorporated*, Docket No. G-002/PA-99-1268 (2000).

[4] FPLE has indicated its intention to seek re-licensing of the facility post-2014. If re-licensing is sought, and approved by the Nuclear Regulatory Commission, the expiration of DAEC's operating license would move from 2014 to 2034.

## IV. Summary of the Issues

The first issue before the Commission is whether IPL's proposal to sell the Duane Arnold nuclear plant to FPLE is consistent with the public interest. If the Commission finds that it is, IPL then asks that the Commission specifically determine that allowing DAEC to be an "eligible facility" as defined by PUCHA, Section 32(a)(2), will benefit consumers, is in the public interest, and does not violate Minnesota law.

As to the first issue, the Company maintains that the transaction is in the public interest. The Company argues that operating a nuclear power plant poses unique challenges and risks that strain its resources and capabilities as a small utility. It argues that the emergence of companies such as FPLE – which owns a fleet of nuclear plants and specializes in nuclear operations – makes it unnecessary for IPL to continue facing these risks and challenges and that it would benefit both the Company and its ratepayers to sell the plant to FPLE.

The Company states that the purchased power agreement it has negotiated with FPLE would make Duane Arnold's power available to IPL and its ratepayers at costs comparable to those currently being incurred, without comparable risks, through 2014. And it states that selling the plant to FPLE provides the best possible assurance that the plant will remain open past 2014 – providing continued employment for plant workers and reliable, low-priced power for IPL or other utility buyers – when its current NRC license expires, since FPLE plans to re-license the plant and IPL does not.

The Department raised concerns that the proposed sale is not consistent with the public interest because it would divest IPL and its ratepayers of a reliable source of low-cost, long-term, baseload generation. While the purchased power agreement may provide a stable supply of reasonably priced, baseload generation through 2014, upon the expiration of that agreement IPL will likely face much higher prices, and greater price volatility, than if it had continued to own the plant and had sought re-licensure from the NRC.

The Department also raised the argument that IPL is acting imprudently in seeking to divest itself of a valuable baseload plant without a comprehensive plan to replace its generation at comparable prices. The Department questioned IPL's motivation, pointing to losses sustained by the parent company on international investments that allegedly require a capital infusion. And the Department raised questions about inter-jurisdictional cost allocations and accounting procedures, although it acknowledged that those concerns are secondary.

## V. Summary of Commission Action

The Commission concurs with the Department that the Company, in its initial filing, has failed to meet its burden to demonstrate that the proposed Transaction is consistent with the public interest.

The DAEC has long been and continues to be a mainstay in the Company's generating portfolio.

It is a reliable source of low-cost, baseload generation. In its 2001 resource plan proceeding completed before this Commission, IPL stated that failing to re-license DAEC – now its preferred course of action – was the most expensive option for meeting ratepayer needs. The Company estimated that failing to proceed with re-licensing would cost its ratepayers $213,500,000 over the 15-year planning period, which stretched from 2003 through 2018.[5]

In its 2003 resource plan, the Company indicated that its evaluation of whether to seek re-licensing of DAEC was underway, but unlikely to be completed by the time of its next IRP.

The Company's apparent about-face in this proceeding is puzzling. While nuclear plants do require significant amounts of financial wherewithal and technical expertise, not only has IPL shown no deficits in these areas in the past, but it has consistently expressed confidence in its ability to handle nuclear operations and its commitment to continue operating Duane Arnold.

Further, while the purchased power agreement the Company has reached with FPLE provides significant ratepayer protection through 2014 and may render the transaction consistent with the public interest through that time, it cannot be found to be consistent with the public interest thereafter. In 2014, the Company would face the volatility of the wholesale power market with no right of first refusal or other significant claim on the low-cost generation of DAEC. And, despite suggestions in the record that the Company may construct a clean-coal plant, it has no meaningful plans for meeting any generation deficit resulting from the DAEC divestiture.

The Commission cannot find the Company's proposed Transaction, as originally presented to the Department and the Commission, to proceed with plant divestiture without careful planning for post-2014 operations – and clear exposition of associated costs – consistent with the public interest.

At the January 19, 2006, hearing on this matter, however, the parties undertook to resolve the matter. The Commission finds that the ratemaking protections agreed upon by the parties, which will remain in effect until 2024, protect Minnesota ratepayers as if the transaction had not taken place. These conditions include:

1. IPL shall maintain base rates for nuclear plant costs at the level to be approved in IPL's rate cases.

2. IPL shall recover only the level of nuclear fuel costs in its Fuel Clause Adjustment set at the level of average 2005 nuclear fuel costs, inflated at an appropriate level per year.

3. IPL will not be allowed to recover other potential transaction costs charged by FPLE because of the sale of the nuclear plant.

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[5] *In the Matter of Interstate Power Company's 2003 Resource Plan,* Docket No. E-001/RP-03-2040.

4. IPL shall make a filing each year until February 2024 to show the inflated amount of 3% or such amount set by the Commission, allowed for nuclear fuel cost recovered through the Fuel Clause Adjustment.

5. The Commission will review IPL's capacity costs or adjusted base rates for nuclear plant cost in the next rate case.

6. IPL shall supply journal entries recording the Transaction herein within 30 days of the closing date with FPLE.

7. Minnesota ratepayers will not be subjected to pay higher rates as a result of the Transaction herein.

8. The Commission is not limited from making other appropriate future ratemaking adjustments to protect Minnesota ratepayers, such as an adjustment to the cost of capital to reflect risks of the purchased power agreement that arises from this transaction.

Since Minnesota represents only some 6.14% of IPL's electric sales, the Commission will not block the transaction, but will approve it with these agreed upon conditions,
thereby allowing it to go forward while institutionalizing financial protections for Minnesota ratepayers.

These actions are explained more fully below.

## VI. With Conditions, The Transaction is Consistent with the Public Interest Until 2024

As proposed by the Applicants, the Commission could not have found the Transaction to be in the public interest. The helpful and creative compromises reached by the parties at oral argument, however, allay significant Commission concerns. With these conditions, the Commission concurs that the Transaction meets the public interest standard.

First, it holds Minnesota ratepayers harmless through February 2024, the longest planning horizon that can reasonably be adopted. It also equitably balances the interests of IPL and its Minnesota ratepayers, permitting IPL management to proceed with what it considers an important initiative while protecting Minnesota ratepayers from what this Commission perceives to be its risks.

Further, it shows appropriate regard for the careful findings of the Iowa Utilities Board, the regulatory body with the responsibility for protecting the vast majority of IPL's ratepayers.

And finally, it maximizes the potential for ensuring that the reliable and economical power of the DAEC facility will remain on the grid until 2034, while insulating Minnesota ratepayers from any cost increase resulting from its conversion from a utility-owned facility to an independently owned generating facility.

## VII. The Transaction Increases Likelihood of Re-licensure of the DAEC, Which is Consistent with the Public Interest

IPL has repeatedly maintained, both here and in the Iowa proceeding, that it will not re-license DAEC. IPL's position is based upon the premise that it no longer wanted to own a nuclear plant because the financial risks were not commensurate with the potential return related to continued ownership under state jurisdictional cost of service regulation.

FPLE has indicated in this proceeding and in Iowa, its intention to seek license extension of DAEC. If approved by the NRC, the expiration of DAEC's operating license would move from 2014 to 2034.

FPLE currently has 11,838 MW of net generation, including 1,076 MW, or 9.1 percent in nuclear plants. FPLE began its involvement with nuclear power in the mid-1960's and operates four nuclear plants at two different locations in Florida, and has received several awards for its nuclear plant operation.

While the Commission has significant authority over IPL's resource selection decisions, as a practical matter, it will not order the Company to re-license the DAEC. Thus, the Transaction, with the agreed upon conditions, represents the most realistic possibility of retaining the plant's substantial generating capacity and preserving the approximately 500 jobs directly associated with its operation.

## VIII. PUCHA Determinations

IPL has requested that the Commission enter an order making certain specific determinations in accordance with the provisions of Section 32(c) of the PUHCA, 15 U.S.C.A. § 79z-5a. Specifically, IPL requests that the Commission determine that allowing DAEC to be an "eligible facility," as defined by PUHCA, meets the statutory criteria set out in the statute.

In order for a generating facility that was included in a utility's ratebase, over which a state regulatory commission had jurisdiction as of October 24, 1992, to constitute an "eligible facility" for purposes of allowing its owner to be an exempt wholesale generator,("EWG"), Section 32(c) of PUHCA requires all relevant state commissions to make a specific determination that allowing the generating facility to be an eligible facility: (1) will benefit consumers, (2) will be in the public interest, and (3) does not violate state law. In the case where the utility that owned the ratebased plant on October 24, 1992, is an affiliate of a registered holding company under PUHCA, specific determinations that allowing the generating facility to be an eligible facility will benefit consumers, is in the public interest, and does not violate state law are required from every state regulatory commission having jurisdiction over the retail rates and charges of the affiliates of such registered holding company.

Accordingly, the Commission finds that allowing DAEC to be an eligible facility will benefit consumers, will be in the public interest, and does not violate state law.

## IX. Conclusion

Divestiture of a high-performing, relatively low-cost baseload generating facility clearly raises public interest issues of the highest order. The Department raised numerous areas of legitimate and significant concern regarding the Transaction herein. However, the Commission is satisfied the set of ratemaking protections hammered out by the parties at oral argument renders the Transaction "consistent with the public interest." The Commission applauds the efforts of the parties to come to resolution of these very difficult and substantial public interest issues.

## ORDER

1. The Commission hereby approves the Petition with the following conditions and reporting requirements set forth below.

2. IPL shall maintain base rates for nuclear plant costs at the level to be approved in IPL's rate cases.

3. IPL shall recover only the level of nuclear fuel costs in its Fuel Clause Adjustment set at the level of average 2005 nuclear fuel costs, inflated at an appropriate level per year.

4. IPL will not be allowed to recover other potential transaction costs charged by FPLE because of the sale of the nuclear plant.

5. IPL shall make a filing each year until February 2024 to show the inflated amount of 3% or such amount set by the Commission, allowed for nuclear fuel cost recovered through the Fuel Clause Adjustment.

6. The Commission will review IPL's capacity costs or adjusted base rates for nuclear plant cost in the next rate case.

7. IPL shall supply journal entries recording the Transaction herein within 30 days of the closing date with FPLE.

8. Minnesota ratepayers will not be subjected to pay higher rates as a result of the Transaction herein.

9. Nothing herein limits the Commission from making other appropriate future ratemaking adjustments to protect Minnesota ratepayers, such as an adjustment to the cost of capital to reflect risks of the purchased power agreement that arises from this transaction.

10. The Commission determines for the sole and limited purpose of PUHCA Section 32(c) that allowing the Duane Arnold Energy Center to be an eligible facility (1) will benefit consumers; (2) will be in the public interest; and (3) does not violate Minnesota law.

11. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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